

Removal and Remand Doctrines
Civil Procedure—Gómez-Arostegui—Fall 2026

I. Removal and Remand

A. General Principles

1. Removal occurs after a plaintiff files a lawsuit in state court. The defendant in the state-court case files a notice of removal in federal court and the entire case is automatically removed to federal court. No need for a court order.
 - a. The defendant will also file a copy of the notice of removal with the state court, so that it is aware that the case has been removed. The state court is divested of jurisdiction unless and until the case returns.
2. The case must be removed to the federal district and division in which the state court sits. For example, if a state-court case was filed in the Multnomah County Circuit Court, it would be removed to the U.S. District Court for the District of Oregon, Portland Division.
 - a. This means that you do not engage in a § 1391 venue analysis in removal cases. Venue is automatically proper in the federal district and division in which the state court sits.
 - i. A party can then, after the case is removed, file a motion in federal court to transfer venue under § 1404(a).
 - b. For a map of the federal divisions of the District of Oregon, which you do not need to know for the exam, see:

<https://www.ord.uscourts.gov/index.php/court-info/contact-us/division-map>
3. Removal is “one way” only, from state court to federal court. Cases are not “removed” from federal court to state court.
4. Removal does not waive any personal-jurisdiction objection which a defendant might wish to raise in federal court.
5. Once in federal court, if the plaintiff wants to go back to state court, the plaintiff must timely file a motion to remand. It is on that motion that the federal judge will consider whether the removal was proper or not.
 - a. The correctness of removal depends on whether: (1) the federal court has subject-matter (SM) jurisdiction over the claims; and (2) the defendant complied with all the procedural requirements for removal.

6. As you already know, a federal judge also has an independent obligation to assess whether the court has SM jurisdiction over the claims. The federal judge will usually not independently assess non-compliance with procedural requirements because those are objections the plaintiff can deliberately forgive and ignore (i.e., waive) or accidentally miss and ignore (i.e., forfeit).

B. Subject-Matter Jurisdiction.

1. Generally, a defendant can remove a state case to federal court if the case could have been filed initially in federal court. That means there must be SM jurisdiction for each of plaintiff's claims; *i.e.*, there must be at least one claim for which there is original SM jurisdiction (FQ or DIV) and then either original SM or supplemental (SUPPL) jurisdiction over the remaining claims.
2. We assess SM jurisdiction over the plaintiff's claims based on the "well-pleaded complaint" rule, just like we do when assessing SM jurisdiction over complaints filed initially in federal court.
 - a. We thus *look at the plaintiff's claims* in the state-court complaint. We ignore the defendant's anticipated or actual counterclaims and ignore the defendant's anticipated or actual defenses.
 - b. We also *ignore* any of the *plaintiff's claims* in the state-court complaint that appear to have been *improperly* inserted to *defeat* federal SM jurisdiction and thus avoid removal to federal court.
 - i. Courts will ignore claims brought against *sham defendants* in order to *avoid* DIV jurisdiction. Sham defendants are defendants who share the same citizenship as the plaintiff and over whom it is clear the plaintiff has no claim.
 - ii. Plaintiffs will sometimes attempt to avoid federal claims, and thus *avoid* FQ jurisdiction, by instead including only state-law claims in their complaints. And that ordinarily is permitted. The plaintiff is the master of her own complaint; if she chooses to file only state-law based claims, she can do that. But if a federal law *completely preempts* a state-law claim, the court will treat the state-law claim *as if* it had been brought as the federal claim sought to be avoided. Doing so will, of course, trigger FQ jurisdiction over that claim.
 - (a). *E.g.*, courts typically hold that the Federal Copyright Act of 1976 completely preempts any and all state-law claims, including conversion and trespass to chattels claims, that are in essence copyright-infringement claims. So if a plaintiff brings a state-law conversion claim that is in essence really a copyright-infringement claim, the court will treat it as a federal copyright-

infringement claim for purposes of removal and for the rest of the litigation in federal court. The federal claim supersedes the preempted state-law claim. This example of the Copyright Act is not tested.

3. In removal cases, we generally assess SM jurisdiction *at the time of the notice of removal* in federal court, rather than at the time the complaint was filed in state court.

That means we can usually take into account circumstances that have changed between the filing of *the state-court complaint* and the filing of *the notice of removal*, unless the court feels the party making the change could potentially be manipulating the system *to their advantage*. For example:

- a. Before removal, a *plaintiff* can *amend* her state-court complaint to *create* federal SM jurisdiction, *e.g.*, by increasing the amount in controversy by adding more claims or increasing the damages sought; voluntarily dropping a party that was non-diverse; or adding a FQ claim. None of these moves feels like manipulation because, if anything, the plaintiff is now opening her case up to being removed to federal court, which might not be in the plaintiff's best interest.
- b. Before removal, courts will ignore, as manipulation, *sham defendants* that a *plaintiff* has *added* to an *amended* state-court complaint so as to *avoid/destroy* DIV jurisdiction.
 - i. In other words, a plaintiff can never add sham defendants to avoid/destroy DIV, whether those sham defendants are included in the initial state-court complaint, *see supra* § B.2.b.i, in an amended state-court complaint, *see supra* § B.3.b, or in an amended federal complaint after removal, *see infra* § B.3.g.
- c. Before removal, courts will ignore, as susceptible to manipulation, the fact a *defendant* has changed her domicile after the state-court complaint so as to *create* diversity of citizenship.
 - i. This follows a general principle that diversity of citizenship must ordinarily exist at the time of the removal *and* at the time the complaint was filed in state court. Thus, courts generally ignore *citizenship* changes between the state-court complaint and the notice of removal in federal court.
- d. Before removal, courts will also ignore, as susceptible to manipulation, the fact a *plaintiff* has changed her domicile after the state-court complaint so as to *avoid/destroy* DIV jurisdiction. Not tested.
 - i. Follows the same general principle as § B.3.c.i above.

ii. Courts have created an exception to this general principle and will consider the fact that a *plaintiff* has changed her domicile after the state-court complaint so as to *create* diversity of citizenship. Not tested.

(a). Again, this does not feel like manipulation. There is no reason to protect a plaintiff against the adverse consequences of his own voluntary acts.

The timing rule suggests that we should always *ignore* things that occur *after removal*, whether those occurrences *create* or *destroy* SM jurisdiction. SM jurisdiction is measured *at the time of removal* and so it usually cannot be based upon or undercut by subsequent events. But truth be told, the law is a mess:

Let's start with the general rule that events after removal *do not alter* SM jurisdiction:

e. After removal, a *plaintiff cannot destroy* the DIV jurisdiction that existed at the time of removal by changing her domicile to destroy complete diversity, or by reducing the amount in controversy by either amending the complaint in federal court to drop a claim or by simply reducing the damages sought on their claims.

i. Relatedly, DIV will not be destroyed if, after the case is removed, a plaintiff loses on some of her claims or wins on her claims but recovers less in damages than she had alleged. Stated another way, a plaintiff does not need to actually recover an amount that exceeds \$75,000 to maintain DIV.

f. After removal, a *defendant cannot cure/create* DIV jurisdiction that did not exist at the time of removal by changing her domicile.

And here are some instances where events after removal *can affect* SM jurisdiction:

g. After removal, a *plaintiff can destroy* the DIV jurisdiction that existed at the time of removal by joining an additional defendant who is non-diverse, so long as it is not a sham defendant. *See supra* § B.2.b.i.

h. After removal, a *plaintiff can destroy* the FQ jurisdiction that existed at the time of removal by voluntarily dropping any and all FQ claims which formed the basis for federal SM jurisdiction. Not tested.

i. After removal, a *plaintiff can cure/create* SM jurisdiction that did not exist at the time of removal by voluntarily adding a FQ claim. Not tested.

- j. After removal, a *court can cure/create* SM jurisdiction that did not exist at the time of removal due to a defect in DIV jurisdiction arising from a non-diverse defendant, if the court, on a party's motion or sua sponte, dismisses the non-diverse defendant.
- i. A court's ability to do this is limited when the non-diverse defendant is an "indispensable" party. We will learn about indispensable parties later in this course.

C. Procedural Requirements for Removal.

1. **Who may remove.** Only the main defendants in the principal suit in state court may remove. Third-party defendants may not remove, nor can plaintiffs who have been named as defendants on counterclaims.
 - a. This also means plaintiffs cannot remove their claims to federal court either. If a plaintiff who filed in state court wants to move the case to federal court, then the plaintiff will have to voluntarily dismiss his state-court lawsuit and refile the lawsuit in federal court.
2. **Defendant-unanimity rule.** *All* properly joined and served defendants in the principal suit in state court must *consent* to removal of the case.
3. **When the notice of removal must occur.** There are two 30-day deadlines:
 - a. If the initial state-court complaint is removable *on its face*, then a 30-day clock starts to run when the defendant first receives a copy of the state-court complaint. If you miss the deadline, then you are stuck in state court. If the initial complaint is not removable on its face, then this clock never runs and it becomes irrelevant.
 - b. If the state-court complaint is not initially removable on its face, but later becomes removable—*e.g.*, the plaintiff has amended the complaint to alter the claims or parties, *see, e.g., supra* § B.3.a, or the defendant learns of information that makes the initial, unaltered state-court complaint removable¹—then a different 30-day clock begins to run from the time the defendant is on notice that the state-court complaint (whether amended or not) is now removable. Again, if you miss this 30-day deadline, then you are stuck in state court.

¹ Imagine, for example, a state-court complaint that on its face alleged that the defendant was a citizen of New York and (erroneously) that the plaintiff was a citizen of New York too. So the case would not be removable under DIV. But then imagine the plaintiff in the state court produces some documents in discovery to the defendant that make it clear that the plaintiff was actually *always* a citizen of New Jersey. So, even though the state-court complaint was not removable *on its face* under DIV, the additional information now in hand makes the case removable under DIV.

- i. Because a lot can happen while a case is in state court, it might take a while for this 30-day deadline to begin to run. There might come a point where it seems ridiculous to allow someone to remove a case to federal court. Imagine, for example, that a suit has been pending in state court for 6 years, and then the parties become diverse and the case now becomes removable for the first time. Does it make sense to allow the defendant to remove that suit to federal court 6 years in, so long as he does so within 30 days of receiving notice that the suit is now removable? Not really. So for some types of suits there is an absolute time limit to remove.
 - ii. DIV: For cases where the *sole* basis of original SM jurisdiction is DIV, the removal must occur within 1 year of the action being commenced in state court.
 - (a). Bad-faith exception. Unless it is clear the plaintiff postponed its changes in the suit until after the 1-year limitation had run, in which case the court will ignore the 1-year limitation as having been manipulated. This bad-faith exception is not tested.
 - iii. FQ: For cases where a basis of original SM jurisdiction is FQ, the 1-year absolute limit does not apply. Thus, if a plaintiff in state court amended his complaint after 3 years to add a FQ claim, then the defendant could, so long as he filed his notice within 30 days of the amendment, remove the case to federal court. Courts feel better about allowing this because the claim involves federal law, thereby strengthening the interest in having a federal court, rather than a state court, adjudicate it.
 - (a). A defendant might nevertheless be deemed to have waived his ability to remove due to a common-law exception we have not studied. The existence and scope of this common-law exception are not tested.
4. **Forum-state defendant rule.** If *any* defendant who has been properly joined and served is a citizen of the forum state, and the *sole* basis of original SM jurisdiction is DIV, then the case cannot be removed.
- a. To be clear, this rule applies even when there is complete diversity. So if the plaintiff is NY, the defendant is OR, the lawsuit raises only state-law claims, and the lawsuit is filed in state court in Oregon, then the defendant cannot remove the case to federal court. And this is so *even though the plaintiff could have initially filed this case in federal court.*
 - i. Go back and look at what I said in § B.1 *supra*: “Generally, a defendant can remove a case to federal court if the case could

have been filed initially in federal court.” Now you can see why I wrote “generally.” This is an exception.

- b. There is an exception to the forum-state defendant rule, known as snap removal, but it is not tested.

D. Procedural Requirements for Remand.

1. **Motion to Remand for Procedural Defects.** Plaintiffs have 30 days from the filing of the notice of removal in federal court to file a motion to remand, at least when relying on a procedural defect of the removal. Failure to file on time means that the plaintiff waives/forfeits the procedural objection and is stuck in federal court, unless they also object on SM jurisdiction grounds.
 - a. For example, if a plaintiff believes that the case never should have been removed because the forum-state defendant rule was triggered, then the plaintiff will have 30 days from the notice of removal to bring that procedural defect to the court’s attention by filing a motion to remand on that basis (and perhaps on other grounds too).
2. **Motion to Remand for Lack of SM Jurisdiction.** Plaintiffs can object to SM jurisdiction at any time. There is no 30-day time limit.
 - a. Recall that a federal judge has an independent obligation to object to a lack of SM jurisdiction.
 - b. Strictly speaking, a defendant can also object to SM jurisdiction at any time, but that is much less likely given that the defendant was the one who removed the case to federal court in the first place.
 - c. When there is no SM jurisdiction, remand is mandatory.

E. What Must be Remanded.

1. When a state-court case is removed into federal court, the entire case is removed with all its claims. On a motion to remand, the court will consider what it can keep, if anything, and what it must send back. The court will do the same analysis if it is assessing SM jurisdiction on its own initiative.
2. When a lawsuit *has no claims* with original SM jurisdiction—*i.e.*, no FQ or DIV—then the court must remand the entire lawsuit. With no FQ or DIV to piggyback on, there can also be no SUPPL jurisdiction. So it all goes back.
3. When a lawsuit *has one or more DIV claims*, alongside additional claims that do not qualify under FQ, DIV, or SUPPL, then the federal court must remand the entire lawsuit. The court cannot sever and remand only the non-qualifying claims. All the claims must go back to the state court.

- a. Reread the above paragraph. Note that DIV is the *sole* basis for original SM jurisdiction.
4. When a lawsuit *has one or more FQ claims*, alongside additional claims that do not qualify under FQ, DIV, or SUPPL, then the federal court *must* keep the FQ claims and must of course remand all the non-qualifying claims. So, for example, if there is a single FQ claim and two other claims that do not qualify for DIV or SUPPL, then only those two non-qualifying claims will be severed and sent back to state court. The FQ claim stays in federal court.
- a. Federal courts do this because they feel an obligation, in removal cases like this, to hear the FQ claims.